

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARTIN MIRANDA and SOCORRO MIRANDA,
individually and as husband and wife,

Plaintiffs,

-against-

CLIFTON HAYWOOD,

Defendant.
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MEMORANDUM AND ORDER

09-CV-1328 (ENV) (CLP)

VITALIANO, D.J.

Plaintiffs Martin and Socorro Miranda bring this personal injury action for damages arising out of a 2007 motor vehicle accident. Plaintiffs now move for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, alleging that defendant Clifton Haywood failed to comply with discovery. On January 22, 2010, Magistrate Judge Cheryl L. Pollak prepared a Report and Recommendation (“R&R”) that the Court deny the motion and allow plaintiffs to refile pursuant to a more appropriate rule, such as Federal Rule of Civil Procedure 37.

In reviewing a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Moreover, in order to accept a magistrate judge’s report and recommendation where no timely objection has been made, the “court need only satisfy itself that there is no clear error on the face of the record.” Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). Plaintiffs have not filed any objection.

After careful review of the record, the Court finds Judge Pollak’s R&R as to the appropriate disposition of this matter to be correct, comprehensive, well-reasoned, and free of any clear error. By its very terms, Rule 11 “does not apply to disclosures and discovery requests, responses,

objections, and motions”, and is not a proper foundation for a motion pursuing sanctions for conduct during discovery. Fed. R. Civ. P. 11(d).

The Court, therefore, adopts Judge Pollak’s R&R in its entirety, and denies plaintiffs’ motion. Plaintiffs are permitted to refile by February 19, 2010. Defendant will file its response, if any, within 10 days of service of plaintiffs’ motion. Should plaintiffs choose to refile, the Court hereby refers the matter to Judge Pollak for another report and recommendation.

SO ORDERED.

DATED: Brooklyn, New York
February 9, 2010

s/ENV

ERIC N. VITALIANO
United States District Judge